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SIPDIS

USDOC FOR 4420/ITA/MAC/MCQUEEN, DAS LEVINE
STATE FOR EB/TPP MASSINGA, FELSING
STATE PASS COPYRIGHT FOR TEPP
STATE PASS INTERNATIONAL IPR ENFORCEMENT COORDINATOR CHRIS
ISRAEL
STATE PASS USPTO FOR DUDAS, BROWNING, SCHIFFMAN, BOLAND,
ANTHONY, NESS
STATE PASS USTR - MENDENHALL, MCCOY, ESPINEL, CELICO
USDOJ FOR SUSSMAN
DHS/CPP FOR PIZZECK

SENSITIVE
SIPDIS

E.O. 12958: N/A

TAGS: KIPR KJUS KCRM ECON ETRD CH

SUBJECT: Shenzhen Optical Disc Forensics Lab Clarifies Its
Capabilities and Procedures: Doing Less With More

REF: A) Beijing 2542; B) 05 Beijing 19671

(U) This message is sensitive but unclassified. Please
handle accordingly.

¶1. (SBU) Summary: Located in Shenzhen but falling under the authority of the Ministry of Public Security (MPS), the Disc Production Source Identification Center (DPSIC) is responsible for etching source identification (SID) codes onto production dies and analyzing optical discs to determine their source dies. DPSIC holds China's only complete exemplar library of optical discs produced in China and is also the only lab to house sound spectrogram and optical media "fingerprinting" equipment to conduct forensic analysis. The lab can only identify discs produced on legally registered production lines. On-site inspectors from the General Administration of Press and Publications (GAPP) are posted at every optical disc replicating facility in China in order to monitor disc titles and production equipment. A GAPP official criticized the accuracy and timeliness of the list of suspected counterfeiting lines provided by the USG in late 2005. The lab's director, though open in discussing technical and procedural issues, expressed no interest in formally cooperating with foreign industry groups. End summary.

¶2. (SBU) On May 19, Embassy Economic Minister Counselor Robert Luke, Embassy Legal Attaché William Liu, Post Economic-Political Chief, and Post Economic Officer visited DPSIC to learn about the lab's technical capabilities, documentary requirements, and potential for future cooperation. The meeting had been in the works since November 2005. Many of the questions raised were submitted by the Embassy beforehand, some of which were provided by representatives of International Federation of the Phonographic Industry (IFPI) and the Motion Picture Association (MPA). Attending on the Chinese side were Lin Cang, DPSIC director; Xiang Zejun, DPSIC vice director; Lu Zhou, Division Chief of Press and Publication's Office of Printing and Reproducing Industry Management in Beijing; Lin Zhaonan, staff in MPS's American and Oceanian Affairs Division's International Cooperation Department in Beijing;

Zhang Jun, division chief in MPS's Social Order Division in Beijing; Liu Zhuo, deputy director of the Shenzhen Press and Publication Office; and Wang Xiaoyin, chief operating officer of Shenzhen Zhicheng Wei Optical Disc Production Ltd.

Background on the Lab

¶3. (SBU) DPSIC falls directly under the Ministry of Public Security (MPS). It was founded in December 1997 and began operations in February 1999. DPSIC moved to a new facility in Shenzhen in early 2006. The facility occupies two floors of an MPS-owned office building on the edge of the city. DPSIC contact information is as follows: Address: No. 1, 1st Xia Meilin Street, 12th Floor, Futian Area, Shenzhen, PRC 518049; Tel: 0755-8319-6000, Fax: 0755-8319-8038; Email: discgov@vip.163.com; Website: www.discgov.com.

SID Etching and Identification

¶4. (SBU) According to Lin Cang, DPSIC director, the lab etches SID codes onto production dies for optical disc manufacturers in China, and has etched approximately 1,300 SID codes since December 2000. An MPS lab in Shanghai also etches SID codes. DPSIC has a library that includes all exemplars in China, including those etched in the Shanghai lab. The Shanghai lab does not store exemplars. The General Administration of Press and Publication designs and authorizes SID codes for use. SID codes help authorities identify factories where optical media is produced. The SID code is stamped on each CD produced by the die with the SID etched on it. It does not reflect the media content on the

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disc. Manufacturers are required to submit 10 disc samples to DPSIC within 15 days after the SID code has been etched. If the manufacturer does not submit samples, the local Press and Publications office will deny its annual registration. If a SID codes wears out from repeated use, the replacement die receives the same SID code. However, the MPS Center is not responsible for ensuring that moulds with worn SID codes are replaced, or even ensuring that un-etched moulds are not substituted. That is the responsibility of the GAPP personnel located in each production facility.

Forensic Analysis: "Fingerprinting" and Sound Spectrum

¶5. (SBU) DPSIC is the only lab in China that uses forensic analysis to identify source dies and issue inspection certificates, which can be used in court proceedings. The lab ideally completes an analysis within 22 working days of application. However, because of delays in receiving correct documentation and fees, as well as occasional difficulties in disc analysis, the process often takes longer. (Note: U.S. media representatives have complained that delays average three months and sometimes much longer. End note.) Since opening in 1999, DPSIC has issued approximately 2,000 inspection certificates from 400 applications. In 2005 alone, the lab issued 500 inspection certificates. Lin said the number of cases involving foreign rights-holders was very small. When asked for a more exact figure, he would only say that it was less than ten percent of the total.

¶6. (SBU) Lin said up to 90 percent of the discs they receive have no identifiable SID code, sometimes because they have been intentionally rubbed off. Discs originally produced as blank discs do not have SID codes, and most pirated discs produced at underground lines do not have SID codes. In these cases, the lab relies on forensic analysis to identify the die used in production. DPSIC conducts forensic analysis through both "fingerprinting" (identifying unique markings on the die) and sound spectrum analysis

(determining differences in sound quality). To conduct "fingerprinting" forensics, the lab uses software or, if the software analysis is not conclusive, microscopes. DPSIC began providing sound spectrum analysis and issuing identification certificates in May 2003, and has thus far made approximately 50 such analyses. The DPSIC facility houses two sound spectrogram machines. When asked about DPSIC's ability to analyze pirated discs made overseas, Lin said the lab does not have foreign data and thus could not handle such cases. DPSIC can only identify discs produced on legally registered production lines in China. DPSIC officials appeared equally reluctant to accept Chinese discs seized overseas, saying that the evidentiary requirements of Chinese courts made it impossible to guarantee the chain of custody.

¶7. (SBU) Those discs that have been submitted by foreign rights holders have been submitted through a Chinese law office. DPSIC staff indicated that this would continue to be the required procedure in the future. When Legat inquired whether the USG could submit suspected counterfeit discs to the MPS requesting the Center's analysis, Lin replied that the Center would not accept them, and did not take instructions from the MPS.

¶8. (SBU) All of the DPSIC staff have university degrees in either computer science or forensics. They must also pass an MPS certification exam. Occasionally, MPS specialists are called in to assist in difficult cases.

Replicators and On-Site Inspectors

¶9. (SBU) DPSIC keeps a record of every optical disc production machine imported into China. Approximately 90 replicators currently operate in China, with 400 production

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lines. Press and Publications employs at least one on-site inspector at every replicating facility in China. These inspectors verify that the titles and content of discs are approved, monitor the number of discs produced, and record replacements of dies and other equipment. On-site inspectors are rotated every two to three years and the replicating facility has no say in their selection. Companies must receive approval from Press and Publications, Ministry of Commerce, and Customs to import a production machine. (Note: However, the machinery from production lines seized underground have been resold at auctions, the tracking of which is unknown. Twenty-one illegal production lines were seized in Guangdong Province in 2005. End note.)

Case Submission and Fees

¶10. (SBU) Only domestic entities can submit optical discs for analysis, thus foreign rights-holders must use a Chinese legal representative. When asked why this requirement exists, Lin said it reduces potential legal complications. SPDIC requires four separate items in order to accept a case: three copies of the pirated disc; legal identification of the submitting entity; copyright registration; and business registration. DPSIC does not require any copies of genuine discs, which had been the understanding of some foreign industry representatives. However, it does ask that these be provided when possible for comparison. When asked why clients must submit identification, copyright, and business evidence, even if they are a well-known company and a repeat client of the lab, Lin simply stated that the procedures must be followed by all clients, each time. When asked why three copies of a pirated disc are required, a sometimes difficult requirement to meet, he said this improves the accuracy of lab analysis.

¶11. (SBU) The cost of submitting an application is RMB 100 (USD 12). This fee covers an initial exam, which determines

whether the lab will be able to reach a conclusive result in the case. If the lab decides to accept the case, it charges an additional RMB 1,900 (USD 237) upon completion of the analysis. If the lab accepts the case but fails to reach a result, it does not charge the additional fee. Forms and instructions for filling them out are now available on-line.

¶12. (SBU) DPSIC does not pass test results to Chinese authorities or initiate cases on behalf of rights-holders. It merely passes the results back to the submitting entity, which must then pursue action on its own behalf through administrative or criminal channels.

No Coordination with Foreign Associations or Governments

¶13. (SBU) When asked whether DPSIC is interested in cooperating with foreign industry groups, Lin said it was not. In particular, Lin said, the Center has no authority to release exemplars in its library to foreign associations for use in forensics analysis overseas. He said DPSIC has not worked with foreign law enforcement agencies, courts, or customs offices in the past. As an explanation, he stated several times that DPSIC must maintain strict independence in its work and must not be influenced by outside forces. He said MPS's Foreign Affairs Office controls all of the lab's contacts with foreign entities but acknowledged he had met foreign industry association representatives on an informal basis. When asked about coordination with domestic organizations, Lin said lab staff occasionally receive briefings from them but also avoids close cooperation. Interestingly, a business representative from a local media company was present at the meeting.

2005 USG List of Suspected Counterfeit Production Lines

¶14. (SBU) When asked about the Chinese response to the USG's

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submission of lists of suspected counterfeit optical disc production lines in 2005, Lu Zhou, Press and Publications representative from Beijing, said any future requests should be handled through the JCCT process, but added the information should be more accurate and timely. Lu said some of the 2005 information was more than five years old and some was mistaken and/or repetitive. He said 46 percent of the document's information was unreliable. Lu added that he welcomes industry groups to provide up-to-date information on which Chinese companies foreign media companies have contracts with who are authorized to sell and produce in China, in order to assist enforcement officials. He added he had made this suggestion to U.S. industry groups on two separate occasions, but so far there has been no response.

¶15. (SBU) Zhang Jun, division chief in MPS's Social Order Division, said MPS investigations have uncovered 223 counterfeit optical disc production lines in China thus far.

Recommendations for Foreign Rights-Holders

¶16. (SBU) Lin and DPSIC staff recommended that foreign rights-holders collect evidence with the utmost care, sealing items until court proceedings and hiring notaries (in China notaries are public officials whose testimony in court carries official weight) to corroborate information. Lu added that companies should not accumulate cases and send them to DPSIC in batches -- rather, they should send cases as they develop in order to reduce bottlenecks in the system.

Comment

¶17. (SBU) Foreign industry groups and company representatives have described DPSIC as opaque and uncooperative. In discussions leading up to this visit, industry representatives were even uncertain as to what types of forensic analysis the lab conducts. Industry is particularly frustrated with DPSIC's requirement that only domestic entities submit cases, the burdensome evidentiary requirement for submissions, and the long waits to obtain results (one year in at least one case). Though the visit request took months before MPS finally approved it, and the lab director expressed an unwillingness to cooperate with industry groups, this meeting nevertheless may open the door to future dialogue with this important link in China's copyright enforcement chain. DPSIC officials now understand that industry and USG interest in the lab is not malicious, but rather aimed at clarifying technical and procedural issues that have caused unnecessary confusion.

¶18. (SBU) Embassy Beijing has cleared this cable.

DONG